

# In the United States Court of Federal Claims

No. 18-1784C

Filed: October 30, 2020

NOT FOR PUBLICATION

**ROBERT J. LABONTE, JR.,**

*Plaintiff,*

**v.**

**UNITED STATES,**

*Defendant.*

## ORDER

For the reasons provided in the Memorandum Opinion filed concurrently with this Order, the defendant's motion to dismiss (ECF 74) the complaint for failure to state a claim under Rule 12(b)(6) of the Rules of the Court of Federal Claims is **GRANTED**, and the complaint's first claim for relief for disability-retirement is **DISMISSED with prejudice**.

The defendant's motion to dismiss (ECF 74) the complaint for lack of jurisdiction under Rule 12(b)(1) of the Rules of the Court of Federal Claims is **GRANTED**, and the complaint's second claim for relief under the due process clause of the fifth amendment is **DISMISSED without prejudice**.

The plaintiff's motion for judgment on the administrative record (ECF 68) and the defendant's cross-motion for judgment on the administrative record (ECF 74) are **DENIED** as moot.

The Clerk is directed to enter final judgment for the defendant and close the case. No costs are awarded.

It is so **ORDERED**.

s/Richard A. Hertling

**Richard A. Hertling**  
**Judge**